IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1108 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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DILAVARKHAN SIKANDARKHAN PATHAN - Applicant(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS ROOPAL R PATEL for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/10/2006

ORAL JUDGMENT

1.0 By way of this application, the externee has challenged the order dated 06.12.2005 passed by the Deputy Police Commissioner, Ahmedabad-respondent No.3 as well as order dated 12.04.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.2.

2.0 Learned Advocate for the externee has

invited my attention to the show-cause notice dated 18.02.2005 issued by respondent No.3. In the said show-cause notice, three offences have been shown as registered against the externee. Thereafter, order dated 06.12.2005 was passed by the respondent No. 2 externing the externee.

3.0 The externee has challenged the order of externment on various Counts. However, learned Advocate for the externee, has restricted his arguments to the aspect of delay in passing the order of externment, only. He has submitted that the order of externment passed by the externing authority is bad in law on the ground that show-cause notice was issued on 18.02.2005 whereas the order of externment was passed by the Authority on 06.12.2005 i.e. there is delay of about ten months in passing the order of exterment months which is not explained by the Authorities. He has further submitted that the externing authority has also not considered the provisions and objects of the Act, and hence, in

view of the unexplained delay of about ten months, order of externment deserves to be quashed and set aside. In support of his Case, learned Advocate has placed reliance on a decision of this Court in the case of ***"Manish @ John Gopalbhai Shah Vs. Dy. Secretary and Others"*** reported in 2006(3)GLH 37 wherein at para 4 and 6 it was held as under,

> "**(4).** The inquiry under S.59 of the Act being of urgent nature the authority should hold the same as expeditiously as possible and if the same are conducted treating the same like an ordinary trial or case, the objection for passing the order is bound to be frustrated. If the authority was of the opinion that the movement or the activities of the petitioner are such which are likely to cause harm to the person or property and they are such involving force and violence, the authority could have without showing any laxity passed the order of externment within a reasonable period delay in such cases would be fatal in a given case as the entire object of passing the order as stated above would be frustrated there is nothing even to suggest that after the aforesaid show-cause notice and for such a long time of more than 18 months till the order was passed the externee continued with any such type of activities.
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> (6). In the instant case if the externee wanted time on absolutely

> unreasonable grounds, the authority should have refused the same and in any case should have passed the order within reasonable period **there is no material on record which justifies such inordinate delay in passing the order. The long delay on the part of the externing authority is sufficient to vitiate the impugned order of externment.”**

4.0 On the contrary, Learned A.P.P. has supported the orders of the Authorities and has submitted that the authorities are invested with the powers to extern such miscreants from adjoining districts by the provision itself for a period necessary and therefore the order cannot be challenged. However, learned A.P.P. is not able to controvert the aspect of delay in passing the externment order.

5.0 Heard. Considering rival side contentions the only question that needs to be addressed by this Court is whether there was delay in passing the order of externment after issuing show-cause notice to the externee.

5.1 In my view externing authority before

passing the order of externment, must satisfy subjectively that no witnesses are willing to come forward to depose against the externee. In the case on hand show-cause notice was issued on 18.02.2005 whereas the order of externment was passed on 06.12.2005. Therefore, there is a delay of about ten months which has not been explained by the authority while passing the order of externment. It may also be noted that even the externee had filed an appeal before the respondent No.2 raising the very same ground of unreasonable and unexplained delay of about ten months in passing the order of externment, but, the same was not considered by the respondent No.2. On the contrary, by its order dated 12.04.2006 the respondent No.2 confirmed the order of externment passed against the externee which shows non consideration of this vital point by the respondent No.2. Hence, in view of the above discussion and view of the decision of this Court in the case of ***"Manish @ John Gopalbhai Shah"*** (Supra) the order of externment deserves to be quashed and set aside.

6.0 In view of the above, the application is allowed. The order dated 06.12.2005 passed by the Deputy Police Commissioner, Ahmedabad-respondent No.3 as well as order dated 12.04.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar-respondent No.2 are quashed and set aside. Rule is made absolute. Direct service is permitted.

(K.S. JHAVERI, J.)

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